

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #5	CCRB Case #: 201708326	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/15/2017 11:23 PM	Location of Incident: East 177th Street and Jerome Avenue	Precinct: 46	18 Mo. SOL 3/15/2019	EO SOL 3/15/2019	
Date/Time CV Reported Tue, 10/10/2017 4:24 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/10/2017 4:24 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Paul Zaino	04702	926336	NARCB BX
2. DT3 Luis Sanchez	1300	947365	NARCB BX
3. DT3 Luilly Vargas	3471	948578	NARCB BX
4. Officers			NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Edward French	00367	932668	NARCB BX
2. SGT Vicente Perez	03173	946108	NARCB BX
3. POM James Causa	09174	950180	NARCB BX
4. DT3 Braulio Aponte	175	948623	NARCB BX
5. DT3 Manuel Cruz	1260	945627	NARCB BX
6. DT3 Daniel Rivera	07978	927418	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Luis Sanchez	Discourtesy: Detective Luis Sanchez spoke discourteously to § 87(2)(b)	
B.DT3 Luilly Vargas	Force: Police Officer Luilly Vargas used physical force against § 87(2)(b)	
C.DT3 Luilly Vargas	Force: Police Officer Luilly Vargas used a chokehold against § 87(2)(b)	
D.DT3 Luilly Vargas	Force: Detective Luilly Vargas restricted § 87(2)(b)'s breathing.	
E.DT3 Luilly Vargas	Discourtesy: Detective Luilly Vargas spoke discourteously to § 87(2)(b)	
F. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
G.DT3 Paul Zaino	Abuse: Detective Paul Zaino searched § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on October 10, 2017.

On September 15, 2017, at approximately 11:23 pm, § 87(2)(b) was walking two acquaintances to hail a taxi on Jerome Avenue near 176<sup>th</sup> Street in the Bronx. § 87(2)(b) reported that a verbal dispute ensued between himself and Det. Luis Sanchez of Bronx Narcotics, who was at the location in plainclothes as part of a buy-and-bust operation. Det. Sanchez said to § 87(2)(b) during the course of this dispute, “I don’t fucking know you,” (**Allegation A: Discourtesy** – § 87(2)(g)). Det. Luilly Vargas allegedly tackled § 87(2)(b) from behind (**Allegation B: Force** – § 87(2)(g)) and placed him in a chokehold (**Allegation C: Force** – § 87(2)(g)) restricting his breathing (**Allegation D: Force** – § 87(2)(g)). Det. Vargas and other officers allegedly called § 87(2)(b) a “punk ass,” a “stupid little motherfucker,” and a “pussy” (**Allegation E: Discourtesy** – § 87(2)(g)) and **Allegation F: Discourtesy** – § 87(2)(g)). Det. Zaino searched § 87(2)(b) and recovered marijuana (**Allegations G: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) was transported to the 46<sup>th</sup> Precinct stationhouse and released with a summons for § 87(2)(b).

Video footage showing portions of this incident was obtained from a nearby storefront. A Snagit showing the relevant portion of the footage is available below (Board Review 01). The original video file is of higher quality and may be viewed at Board Review 16.

### Findings and Recommendations

#### **Allegation A: Abuse of Authority – Detective Luis Sanchez spoke to discourteously to**

§ 87(2)(b)

#### **Allegation B: Force – Detective Luilly Vargas used physical force against**

§ 87(2)(b) said in his interview (Board Review 02) that he was waiting for a taxi with two acquaintances, whose names and contact information he did not know, when Det. Sanchez began arguing with him. § 87(2)(b) did not know Det. Sanchez was a police officer, and believed instead that he was someone from a different neighborhood whose residents § 87(2)(b) does not get along with. § 87(2)(b) could not recall what he and Det. Sanchez were saying, with the exception that Det. Sanchez called him “son,” and § 87(2)(b) told Det. Sanchez that he did not talk to people he does not know. § 87(2)(b) denied making any threats. § 87(2)(b) was in a stance with his hands holding the top of his shorts up, preparing to “duck” or “weave,” when he was tackled from behind by Det. Vargas. § 87(2)(b) was generally consistent in his phone statement and intake statement (Board Review 03 and Board Review 04).

§ 87(2)(e)

§ 87(2)(b) apparently interpreting the signal as directed towards him, said, “Are you fucking talking to me?” Det. Sanchez replied, “I don’t fucking know you,” and § 87(2)(b) continued to curse at him, repeatedly saying he would, “fuck [Det. Sanchez] up.” Det. Sanchez opened the microphone on his radio so that the field team could hear what was happening. § 87(2)(b) raised his fists and reached behind his back with one hand,

when the field team arrived and grabbed § 87(2)(b) as Det. Sanchez turned around and walked away.

Det. Vargas said (Board Review 06) that he heard Det. Sanchez say over the radio, “You’re going to fuck me up?” He could not hear what § 87(2)(b) was saying. Det. Vargas went Det. Sanchez’s location and saw § 87(2)(b) facing Det. Sanchez with his right hand reaching behind his back and the other hand held up in a clenched fist. Det. Vargas said, “Police, don’t move” and placed a handcuff on § 87(2)(b)’s right hand. § 87(2)(b) twisted his body away from Det. Vargas, falling to the ground and bringing Det. Vargas with him.

Det. Aponte’s statement (Board Review 07) was generally consistent with Det. Vargas. PO Causa (Board Review 08), Det. French (Board Review 09), Sgt. Perez (Board Review 10), Det. Cruz (Board Review 11), and Det. Rivera (Board Review 12) all testified that § 87(2)(b) was already controlled and detained when they arrived on the scene. Det. Zaino testified that § 87(2)(b) was squared off with Det. Sanchez when he arrived on the scene, but he did not know how § 87(2)(b) wound up on ground.



Snag 1.mp4

The video shows Det. Sanchez and § 87(2)(b) in the upper right portion of the frame, beginning to circle each other within a distance of several feet, until Det. Vargas runs from his RMP towards § 87(2)(b) and they appear to lurch together to the ground.

The medical records obtained from § 87(2)(b) (Board Review 15) state that § 87(2)(b) reported “3 cops pushed him and restrained him against the floor,” causing pain in his neck and lower back and swelling and excoriation on the skin of his hand. X-rays of his hand, wrist and spine showed no fractures and he was released with a prescription for pain medication.

Officers are required to be courteous and respectful to civilians. PG 203-09 (Board Review 13). The court has previously given latitude to officers who use otherwise impolite words to address civilians in a stressful street encounter. See Disciplinary Case No. 67797/93 (Board Review 25).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. PG 221-01 (Board Review 14).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

**Allegation C: Force – Detective Luilly Vargas used a chokehold against** § 87(2)(b)

**Allegation D: Force – Detective Luilly Vargas restricted § 87(2)(b) s breathing.**

§ 87(2)(b) said that as he went to the ground, Det. Vargas placed his forearm across the front of § 87(2)(b)'s neck, restricting his breathing to the extent that he was unable to speak. Once on the ground, Det. Vargas pressed § 87(2)(b)'s neck down onto Det. Vargas' forearm for approximately 10 seconds. § 87(2)(b) was initially resisting handcuffing on the ground by moving his arms and body, but became cooperative after 15 to 20 seconds one he realized Det. Vargas was an officer.

Det. Vargas testified that § 87(2)(b) stopped resisting once on the ground and was handcuffed easily. Det. Vargas denied placing a forearm on § 87(2)(b)'s neck or otherwise restricting his breathing.

Det. Aponte was consistent with Det. Vargas that Det. Vargas made no contact with § 87(2)(b)'s neck and did not restrict breathing. Det. Sanchez said that he walked away from the scene as § 87(2)(b) was grabbed and did not see any officer make contact with § 87(2)(b)'s neck. Det. Zaino did not remember how § 87(2)(b) was taken to the ground or handcuffed but was unaware of any officer making contact with § 87(2)(b)'s neck. The remaining officers testified that they arrived after § 87(2)(b) was handcuffed and denied witnessing any officer make contact with § 87(2)(b) neck or restrict his breathing.

In the video, § 87(2)(b) and Det. Vargas are obscured by a staircase after going to the ground. Det. Vargas' actions during this period are not discernable.

Records obtained from § 87(2)(b) (Board Review 15) show that on § 87(2)(b) § 87(2)(b) reported that “3 cops pushed him and restrained him against the floor,” causing, “pain in the neck with movement.” There is no mention of his having been choked or officers restraining him by the neck or otherwise making contact with that area of his body.

A chokehold includes, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Officers shall not use a chokehold. PG 221-01 (Board Review 14).

§ 87(2)(g)

**Allegation E: Discourtesy – Detective Luilly Vargas spoke discourteously to** § 87(2)(b)

**Allegation F: Discourtesy – Officers spoke discourteously to** § 87(2)(b)

§ 87(2)(b) said that after he was in handcuffs, Det. Vargas and two other officers called him a “stupid little motherfucker” and told him to “shut [his] punk ass up.” § 87(2)(b) described the officers besides Det. Vargas who made these statements as a white male and a black male, both approximately 6’ tall and 30 to 40 years old. In his phone statement, § 87(2)(b) alleged that Det. Vargas called him a “pussy.”

Det. Vargas and all other officers denied or did not recall making or hearing any of the alleged discourteous statements, and also denied using any profanity when speaking with § 87(2)(b). According to their department photographs, Det. Zaino and Det. French are both white males above 5’10” and in their 40’s (Board Review 17). According to the tactical plan (Board Review 18) and all officer testimony, no black officers were working during the incident.

§ 87(2)(g)

**Allegation G: Abuse of Authority – Detective Paul Zaino searched** § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) said that after he was placed in handcuffs, he was searched by a black male officer, who first patted down the outside of his pants pockets before reaching into his back pants pockets and pulling out two bags of marijuana.

Det. French testified that he was the designated arresting officer during the incident, and responsible for recording the field team’s activities. Det. French’s memo book (Board Review 24) states that Det. Zaino recovered marijuana from § 87(2)(b).

Det. Zaino did not recall whether he searched § 87(2)(b). He said that Det. French's memo book entry indicated that he did, and that based on his recollection of the incident, such a search would have been part of § 87(2)(b)'s arrest, which he understood to be underway by the time he arrived at the scene. Det. Causa, the only officer who remembered who searched § 87(2)(b) said that Det. Zaino conducted the search. All officer testimony was consistent that, at the time of the search, § 87(2)(b) was under arrest for threatening Det. Sanchez.

Officers may search someone incident to a lawful arrest. People v. Weintraub, 35 N.Y.2d 351 (Board Review 19). A person is guilty of harassment in the second degree when, with intent to harass another person, they threaten to subject that person to physical contact. NY Penal Law, 240.26 (Board Review 20).

§ 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) rejected mediation, § 87(2)(b)
- A request for any Notice of Claim has been submitted to the Office of the Comptroller and will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c)

### **Civilian and Subject Officer CCRB Histories**

- § 87(2)(b)
- In nine years with the NYPD, Det. Sanchez has been a subject of 19 prior allegations in 11 CCRB cases. None of these allegations was substantiated. Three of these prior allegations were discourtesies.
- In seven years with the NYPD, Det. Vargas has been the subject of one prior allegation, which was not substantiated.
- In 17 years with the NYPD, Det. Zaino has been the subject of six prior allegations in three CCRB cases. None of these allegations was substantiated.

Squad No.:			
Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date